

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4670

IN THE MATTER OF:

Served September 29, 1995

Application to Transfer Assets from)
TRI STATE CASINO TOURS, INC.,)
WMATC No. 143, and D.A.Y.)
ENTERPRISES, INC., WMATC No. 166,)
to NEW WORLD TOURS, INC., and for)
Temporary Approval)

Case No. AP-95-36

By application filed July 27, 1995, Tri State Casino Tours, Inc., WMATC Carrier No. 143 (Tri State), D.A.Y. Enterprises, Inc., WMATC Carrier No. 166 (DAY), (collectively transferors), and New World Tours, Inc., a Virginia corporation (New World or transferee), (collectively applicants), seek Commission approval of the transfer of assets, including Certificates of Authority Nos. 143 and 166, from Tri State and DAY to New World. New World also seeks temporary approval to operate those assets pending approval of the transfer and issuance of a certificate of authority.

Notice of this application was served on August 11, 1995, in Order No. 4643, and applicants were directed to publish further notice in a newspaper and file an affidavit of publication and statements identifying any control relationships transferee might have with non-WMATC carriers, indicating which of the two certificates transferee wishes to retain, and addressing certain criteria established by Commission precedent for deciding transfer applications and temporary approval applications. Applicants complied. The application is unopposed.

SUMMARY OF EVIDENCE

The application includes information regarding, among other things, transferee's corporate status, carrier affiliations, facilities, proposed tariff, finances, and regulatory compliance record.

Transferee is a passenger carrier operating under federal and state authority. The shareholders, directors and officers who control transferee also control transferors. Transferee has no control relationships with any other carriers.

Transferee proposes conducting operations with seventeen motorcoaches and one minibus. Transferee's proposed tariff contains hourly charter rates with minimum charges.

Transferee filed a balance sheet as of June 22, 1995, showing assets of \$607,319; liabilities of \$25,861; and equity of \$581,458. Transferee's profit and loss statement for January 1995 through May 1995 shows income of \$1,061,965; expenses of \$810,977; and net income

of \$250,988. Transferee's projected profit and loss statement for 1995 shows revenue of \$2,590,000; expenses of \$2,224,299; and net income of \$365,701.

Transferee certifies it has access to, is familiar with, and will comply with the Compact, the Commission's rules and regulations, and United States Department of Transportation regulations relating to transportation of passengers for hire.

Transferee has elected to retain Certificate No. 143 and has hired all employees of Tri State.

DISCUSSION AND CONCLUSION

Under Article XI, Section 11(a), and Article XII, Section 3(a)(ii), of the Compact, the Commission may approve the proposed transfer of assets, including Certificates of Authority Nos. 143 and 166, if the Commission finds said transfer to be in the public interest. The public interest analysis in a transfer of operating rights and other assets focuses on the transferee's fitness, the resulting competitive balance, the benefits to the riding public, and the interests of affected employees.¹

The evidence summarized above establishes transferee's fitness. Consolidation of transferors' operations is unlikely to result in any appreciable concentration of market power. Transferee controls seventeen buses, an insignificant number when compared to the number of motorcoaches operated in the Metropolitan District by such carriers as Greyhound Lines, Inc., Peter Pan Bus Lines, Inc., and Gold Line, Inc. The public benefits are self-evident and were established when transferors acquired their certificates. Transferors' employees will not be substantially affected. We therefore find that the proposed transfer is consistent with the public interest.

Upon satisfaction of all conditions stated herein, Certificate of Authority No. 143 will be reissued to New World. At that time, Certificate of Authority No. 166 will merge into Certificate No. 143 and stand revoked.²

Under Article XII, Section 3(d), of the Compact, the Commission may grant transferee temporary approval to operate transferors' assets prior to issuance of the certificate of authority, up to a maximum of 180 consecutive days, but only if said grant is found to be consistent with the public interest.³ The public interest analysis includes an assessment of whether and to what extent a denial of temporary

¹ In re Shaw Bus Serv., Inc., & National School Bus Serv., Inc., No. AP-95-32, Order No. 4638 (July 24, 1995).

² In re Carey Limo. D.C., Inc., & ADV Int'l Corp., t/a Moran Limo. Serv., No. AP-94-53, Order No. 4499 (Feb. 16, 1995).

³ See Order No. 4638 at 2 (temporary authority granted pending reissuance of certificate).

approval would cause a diminution in value or utility of the subject property.⁴ Temporary approval may be granted to a non-WMATC carrier upon a finding of fitness.⁵

We have already found transferee fit, and inasmuch as transferors no longer control the subject assets, it may be inferred that denial of temporary authority will result in a diminution in the value of goodwill associated with transferors' operations until transferee's certificate is issued.⁶ Accordingly, we will issue a grant of temporary approval. Such approval shall be effective from the date of transferee's compliance with certain conditions, as specified below, and continue until such time as Certificate No. 143 is reissued, not to exceed 180 days.

THEREFORE, IT IS ORDERED:

1. That, contingent on New World complying with the requirements of the next following paragraph, New World is hereby granted temporary approval to operate the assets of Tri State and DAY at the rates proposed in the application, and that such approval shall be effective from the date of issuance of a letter to New World by the Commission's Executive Director acknowledging New World's compliance with the next following paragraph; and temporary approval shall continue until such time, if any, as Certificate No. 143 is reissued, not to exceed 180 days.

2. That New World is hereby directed to file the following documents with the Commission: (a) evidence of insurance pursuant to Commission Regulation No. 58 and Order No. 4203; and (b) a notarized affidavit of vehicle identification pursuant to Commission Regulation No. 61, for which purpose WMATC No. 143 is hereby assigned.

3. That the proposed transfer of assets is hereby conditionally approved, contingent upon New World's timely compliance with the following requirements.

4. That New World is hereby directed to file the following documents with the Commission: (a) four copies of a tariff or tariffs in accordance with Commission Regulation No. 55; (b) an equipment list stating the year, make, model, serial number, vehicle number, license plate number (with jurisdiction) and seating capacity of each vehicle to be used in revenue operations; (c) evidence of ownership or a lease as required by Commission Regulation No. 62 for each vehicle to be used in revenue operations; and (d) proof of current safety inspection of said vehicle(s) by or on behalf of the United States Department of Transportation, the State of Maryland, the District of Columbia, or the Commonwealth of Virginia.

⁴ Id. at 2.

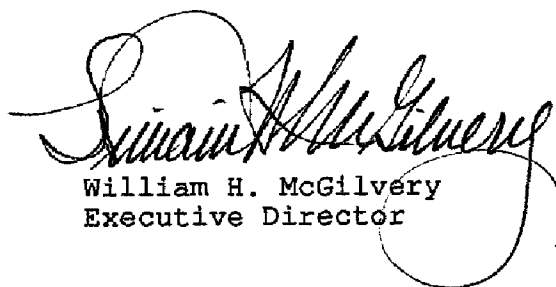
⁵ Id. at 2.

⁶ See id. at 2 (goodwill likely to decline in value until authority granted).

5. That upon timely compliance with the requirements of the immediately preceding paragraph and acceptance of the documents required by the Commission, Certificate of Authority No. 143 shall be reissued to New World Tours, Inc., 9406-B Gunston Cove Road, Lorton, VA 22079.

6. That unless New World complies with the requirements of this order within 30 days from the date of its issuance, or such additional time as the Commission may direct or allow, the grant of temporary approval and approval of transfer shall be void and the application shall stand denied in its entirety effective upon the expiration of said compliance time.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS ALEXANDER, LIGON, AND SHANNON:



William H. McGilvery
Executive Director